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ARTICLE

Litigation politics: social movement activity in campus sexual assault litigation

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Abstract

Critics point to increasing private lawsuits filed by students accused of campus sexual assault as evidence that Obama-era Title IX guidance overcorrected and favored victims at the expense of the due process rights of the accused. This overcorrection narrative powerfully reshaped the debate surrounding campus sexual assault and ultimately contributed to the rescinding of the guidance. Existing analytical tools from legal mobilization scholarship – emphasizing the deployment of litigation by social movement actors – are not equipped to identify the origins and dissemination of this political narrative. Drawing from legal complaints, media coverage and interviews with lawyers, we show how private practice attorneys with no visible movement ties helped craft the overcorrection narrative from individual lawsuits by (1) embedding political claims in legal filings, (2) amplifying the narrative in media and (3) collaborating with advocates in quantifying the litigation trend. We extend prior scholarship and illustrate how lawsuits can be both a vehicle of political storytelling and the story itself. We further argue that the ideology of liberal legalism can mask the politics of private lawsuits, making litigation a useful tool for social movement efforts to mobilize support for legal reform.

Keywords: social movements; legal mobilization; cause lawyering; litigation; sexual assault; Title IX

Scholars of legal mobilization have studied how social movements deploy litigation as a political strategy – to produce long-term institutional change (McCann 1994; Rosenberg 1991), obtain short-term remedial relief for movement beneficiaries (Burstein 1991) or assist with movement building (McCann 2006). Legal mobilization scholars have also considered how narratives about law and litigation play a role in political contestation, helping movement actors shape public perceptions of a problem and the appropriateness of state intervention (Gould 2005; Haltom and McCann 2004). But as socio-legal scholars have moved beyond the internal dynamics of lawsuits to consider the political utility of litigation for movements, the study of ordinary lawsuits as political objects has fallen away. Legal mobilization scholars, in other words, tend to treat lawsuits as "political" only when initiated by social movement actors or cause

lawyers, but not when brought by ordinary citizens with the assistance of conventional attorneys (McCann 1991). Or they analyze these ordinary lawsuits as *objects* of social movement narratives – as evidence, for example, of a legal system gone awry (Haltom and McCann 2004) – but treat the narratives contained *within* these lawsuits as "legal" rather than "political" storytelling (Grunewald 2023). This tendency to see political activity in only some lawsuits or narratives paradoxically reinforces a key principle of American legal liberalism (and a longstanding target of socio-legal critique) – that "law" is separate and distinct from "politics."

What kind of political activity do legal mobilization scholars miss by treating ordinary lawsuits as outside their frame of analysis? What would it look like to see political activity in conventional lawyering? This paper examines private lawsuits that are neither initiated nor sponsored by legal advocacy or other social movement organizations; they instead involve private practice attorneys filing legal complaints on behalf of individual clients (Black 1973). Rather than "following the money" or funders of legal mobilization campaigns, we "follow the story" and uncover how private practice attorneys construct and disseminate narratives that connect the individual legal pleadings of ordinary lawsuits with the political activity of social movements. We argue that the invisibility of this work under American legal liberalism aids the effectiveness of political storytelling.

We approach the task of excavating the political in private litigation through a multi-method analysis of the case of campus sexual assault litigation. In 2011, the Obama administration released a Dear Colleague Letter (DCL)[1] that dramatically changed the politics of sexual assault. The DCL emphasized that Title IX requires all colleges and universities receiving federal funding to respond "promptly and equitably" to reports of sexual violence and suggested ways for schools to change their procedures for investigating and adjudicating complaints. The Office for Civil Rights (OCR), the federal agency responsible for enforcing Title IX, followed up by dramatically increasing enforcement: by July 2016, the OCR was investigating nearly 300 schools for possible Title IX violations (Lipka 2016).

The 2011 DCL sparked a political debate over how schools can better attend to the harms of sexual violence while simultaneously ensuring a fair process for accused students. Survivor activists, who had demanded for years that universities do more to address persistently high levels of sexual assault, celebrated the OCR's active intervention (Behre 2019; Cantalupo 2009). This activism (Heldman et al. 2018) resulted in more students filing OCR complaints and lawsuits against schools, accusing them of failing to adequately respond to known sexual misconduct (Peterson and Ortiz 2016; Reynolds 2019).

Critics, however, viewed the 2011 DCL as stripping away due process protections for students accused of misconduct (Halley 2015; Rudovsky et al. 2015). Accused students also sued their schools for rights violations. A diverse range of actors – including men's rights organizations, individual rights organizations, groups founded by the mothers of disciplined students, private practice attorneys and professors – coalesced as a social movement, with the shared goal of rolling back the Obama-era Title IX guidance and enacting stricter due process protections for accused students. Many movement actors decried the "pressure" OCR was placing on schools and argued that schools had *overcorrected* for earlier deficiencies by creating procedures that favored student complainants[2] and discriminated against the accused (Ellis 2013; Ellman-Golan 2017;

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Fries 2013; Harris and Johnson 2019; Hendrix 2012). We refer to this critique as the *overcorrection narrative*.[3]

The protagonist of this narrative is a student unfairly disciplined by his university.[4] This student is typically portrayed as an accomplished young man with a promising future who is victimized first by the vindictive lies or false allegations of the complainant – usually a young woman – and then by the real villains of the story: his school and the federal government, both of whom failed to provide adequate procedural protections during the campus disciplinary process (Behre 2019). The normative conclusion of the overcorrection narrative is that the Department of Education went too far in recommending changes to disciplinary procedures and ought now to enact more rigorous due process protections for students accused of sexual misconduct. This narrative proved to be effective, as it was ultimately deployed by the Trump administration to justify rescinding the 2011 DCL and developing Title IX regulations that strengthened due process protections.

Legal mobilization scholars seeking to identify the source of this narrative and how it was disseminated would have difficulty doing so using existing analytical tools. The lawsuits brought by student respondents after the 2011 DCL were not initiated by legal advocacy organizations or cause lawyers; they were brought by private practice attorneys discovering a new and lucrative area of law. There was no organized litigation campaign; each lawsuit appeared unrelated to the next. There was no funding stream linking together these cases, the private practice attorneys who brought them and the advocacy organizations that crafted a narrative about them. *How, then, did these individual, private lawsuits form the basis for a powerful collective narrative for reform?*

We draw on interviews with respondent-side attorneys and due process advocates, along with legal complaints, press releases, media coverage of lawsuits, websites of law firms and advocacy organizations and public comments on proposed Title IX regulations to trace the construction and dissemination of the overcorrection narrative. We find that private practice attorneys were central to this process. Initially enlisted as outsiders to this domain by student respondents in search of lawyers, these attorneys soon found themselves endorsing and elaborating the overcorrection narrative, embedding it in legal complaints and press releases and repeating it in frequent media interviews. Their "repeat player" status conferred standing in the media, giving their narrative a platform for broad dissemination. Due process advocacy organizations seeking to influence the OCR's Title IX regulations developed ties to these attorneys and aggregated respondent-initiated private lawsuits to further amplify a sense of crisis: The "surge" in respondent-initiated lawsuits is proof, due process advocates argued, that promising young men accused of sexual misconduct were being railroaded not just by their schools but by the federal agency charged with enforcing antidiscrimination laws.

This strategy of aggregating individual lawsuits to tell a story about a social problem has been aided by the strategy's *invisibility* – both as a political project and an object of scholarly analysis. The seeming naturalness of individual, private lawsuits enhances their utility for social movements seeking to construct a story about a particular social problem. In American political culture, the public often views *any* uptick in litigation as suggesting an increase in some underlying problem (Galanter 1983a) – without recognizing that political actors may have a hand in shaping the narrative about what is causing a perceived problem and what should be done about it

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(Haltom and McCann 2004). This perception of lack of coordination is nurtured by a core principle of liberal legalism, that "law" is separate and distinct from "politics" (Silbey 2005). Because many Americans understand legal claims as grounded in legal principles and constitutional theories – rather than as political claims-making – the politics of litigation are often not legible. The ideology of liberal legalism has the effect of construing political claims as legal arguments and political advocates as simply legal practitioners. We seek to not only identify the politics within private litigation but also encourage socio-legal scholars to make this task a theoretical and empirical priority.

Legal mobilization and cause lawyering

Two socio-legal literatures have examined litigation as a political strategy. The literature on legal mobilization considers both the direct and indirect effects of litigation strategies by social movements (Lehoucq and Taylor 2019). Scholars have focused on "test case" or "impact" litigation campaigns intended to develop legal precedent capable of producing long-term institutional change (e.g., desegregation or same sex marriage) (Handler 1978; McCann 1994; Rosenberg 1991). Burstein and his colleagues focused on social movement strategies seeking to win short-term remedial relief, such as for victims of discrimination (Burstein 1991; Burstein and Monaghan 1986). Others have emphasized the indirect or "radiating" (Galanter 1983b) effects of legal actions on social movements, observing the role of litigation in movement building – publicizing grievances, attracting elite support and mobilizing new activists (Boutcher 2013; Coleman et al. 2005; McCann 2006; O'Connor 1980; Olson 1984; Scheingold 1974; Schneider 1986; Silverstein 1996).

Much of this work is focused on the visible deployment of law by organized actors, such as legal advocacy organizations (Keck 2014; Levitsky 2006; Schneider 1986) and labor unions (McCammon 2001; McCann 1994), or the social movement support structures (including funders) that facilitate legal mobilization (Epp 1998; Hollis-Brusky and Wilson 2020; Teles 2008). This literature often follows the money, examining the ways wealthy donors or private foundations fund litigation (Bennett 2017; Hollis-Brusky and Wilson 2020). Scholars have been less interested in the ways that individual, private lawsuits – paid for through a conventional attorney-client fee structure and seemingly unattached to an organized political movement – might advance movement goals.

A second literature on "cause lawyering" focuses on the professional dilemmas of lawyers with political or moral commitments to a cause (Austin and Scheingold 2006; Sarat and Scheingold 2005; Scheingold and Sarat 2004). This work examines how – and why – lawyers pursue social change in a profession committed to the appearance of neutrality. The focus is on how cause lawyers relate to and construct their clients or the way they organize their legal practices to support their political work (Boutcher 2013; Marshall and Crocker Hale 2014). This literature does not pursue the question that we ask: How might private practice lawyers, under the cultural assumption that lawyering is apolitical, contribute to the production of social movement narratives?

Litigation and social movement narratives

Legal mobilization scholars working in the social constructionist tradition have focused on how narratives about law and litigation help to accomplish a key social

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movement task: shaping the interpretation of social conditions, events, actors and actions in ways that legitimize social movement goals (Polletta 2006). Because social conditions are open to multiple interpretations – and are therefore contestable and negotiable – social movement actors play an active role in shaping the meaning of particular conditions (Snow et al. 2018).[5]

Haltom and McCann's (2004) work on the tort reform movement highlights the role that cultural narratives about litigation play in political contestation: political actors use stories about lawsuits to shape the public's understanding of a given social problem, as well as perceptions of appropriate policy solutions. Haltom and McCann detail the ways in which tort reformers – a disparate group of corporate-sponsored elites, intellectuals, lobbyists, media personalities and their elected allies – created and disseminated narratives designed to shape the public's impression that our civil litigation system is broken, overrun by baseless cases brought by overly litigious Americans lacking personal responsibility. The routinized conventions of news reporting amplified tort reformers' rhetoric, reproducing and normalizing "tort tales" as a seemingly accurate reflection of what is wrong with the American civil legal system. Tort reformers not only sought to shape the public narrative of the problem but they also offered a commonsense solution: policymakers should make it harder for ordinary citizens to sue when they have been injured.

In Haltom and McCann's account, lawsuits form the basis for the tort reform movement's political narrative – reformers tell a story about already-litigated tort cases and the plaintiffs who brought them, largely to dismiss their validity. In their analysis, the political narrative about the lawsuits is understood as distinct from the legal narratives contained within the lawsuits themselves. We extend Haltom and McCann's work by considering (1) whether the narratives found *within* legal pleadings can also serve a political purpose and (2) why the politics of legal narratives (and the attorneys who write them) are so difficult to discern.

The source of this obfuscation, we suggest, is the American ideology of liberal legalism. At the core of liberal legality is the belief that law should remain separate from and above politics (Kairys 1998). Many Americans believe that courts ought to be autonomous institutions operating according to preexisting and predictable rules. According to this view, the quasi-scientific, objective task of legal analysis should be accomplished by judges and lawyers with the technical expertise to apply these rules to the facts of any given case (Kairys 1998). Even when the public expresses dissatisfaction with individual decisions – criticizing judges who have overstepped their bounds or let bias corrupt their analyses – such cases are often conceptualized as deviations from this ideal of liberal legality (Kairys 1998). The implications of liberal legality for legal mobilization are significant: under legal liberalism, political arguments embedded in complaints are seen as *legal* arguments rather than political claims. The lawyers who file these lawsuits are viewed as legal practitioners rather than political advocates.

This paper contributes to the legal mobilization literature by considering how private lawsuits – and the lawyers who bring them – can play an essential role in political efforts to shape the public narrative about a social issue. Because most private practice attorneys are neither funded by nor work for movement organizations, we cannot "follow the money" to link their work to social movement actors; instead, we "follow the story." Because of this, we focus on social movement *narratives* rather than *frames* (Snow and Benford 1988; Snow et al. 1986). First, narratives are easy to identify: by

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definition, they have a beginning, a middle and an end (Ewick and Silbey 1995; Polletta 2006). By contrast, it can be difficult to identify a beginning and an end to a frame; often analysts have to justify how they determine the parameters around what is in or out of frame (Polletta 2006). Second, the fact that we can isolate narratives (or different versions of a narrative) means that we can trace their "careers" (Polletta 2006), from legal pleadings, to press releases, to websites, to formal statements submitted to policymakers. The narrative, in other words, permits a way of seeing the connections between individual stories of injustice embedded in individual lawsuits and social movement narratives for legal reform. Finally, narratives have a *plot* (or a causal linkage of events or characters that explains why things occurred as they did) and a *normative conclusion* – or colloquially the "point of the story" (Ewick and Silbey 1995; Polletta 2006). While these elements resemble collective action frames in offering an interpretation of why things occurred as they did and what should be done, we are focused on the storytelling as much as the story itself. Following Polletta (2006, 3), we note that stories are differently authoritative depending on "who tells them, when, for what purpose, and in what setting." Here we consider how the stories that are told by attorneys have an important capacity to appear nonpolitical.

Methods

We assembled data that enabled us to empirically trace the construction and dissemination of the overcorrection narrative. The first step involved identifying student-initiated litigation about campus sexual misconduct and interviewing prominent private practice attorneys that represented accused students. We then followed the overcorrection narrative from the legal complaints and press releases drafted by these attorneys, to the media coverage these lawsuits received and ultimately to federal policymaking. This involved triangulating a range of data sources. As our intervention of locating the political in private litigation is both a theoretical and an analytical one, we find it necessary to detail how we "followed the story." This includes both how existing socio-legal research shaped our intuitions about where to look and how findings at each stage of the process informed the next stage of investigation.

Identifying private litigation targeting universities

We began by collecting campus sexual misconduct lawsuits filed against a representative sample of 4-year colleges and universities. This allowed us to avoid attending only to high-profile cases. We drew our sample of 381 colleges and universities from 4-year schools with undergraduate enrollments of 900 or more listed in the Integrated Postsecondary Education Data System (IPEDS). The sample includes a random sample of 298 schools and a certainty sample of 114 schools, with some overlap. The certainty sample contains all public state flagship schools, Ivy League universities, all schools participating in several athletic conferences and the 10 most selective Historically Black Colleges and Universities, women's colleges and Christian colleges.

We used BloombergLaw, a searchable database of all publicly available federal court dockets, which allowed us to collect cases that were dismissed or settled before going to trial. We searched for cases where the schools were listed as defendant between 1992 (when the Supreme Court in *Franklin v. Gwinnett* first recognized the right to monetary

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relief under Title IX) to 2019. We further specified that the case documents contained at least one of the following keywords: sexual violence, sexual assault, sexual misconduct, rape, Clery, sexual harassment, gender-based violence, sexual abuse or rapist. We excluded cases involving faculty-student sexual misconduct. Two trained coders coded the initial complaints and the docket for each case, then met weekly to reconcile their coding under the supervision of the second author. We coded for characteristics of the plaintiff (e.g., whether the plaintiff was the complainant or the respondent in campus procedures), causes of action, outcome of the case and the attorneys of record. We ended up with 173 lawsuits, of which 111 cases (64%) were filed by respondents and 62 (36%) by complainants.

Tracing the construction and dissemination of the overcorrection narrative

Interviews with due process advocates

The third author conducted interviews with eight practicing attorneys representing accused students and four other due process advocates (including two university faculty members) (see Appendix A).[6] These interviews included attorneys represented in our data set as "repeat players" as well as individuals covered in high-profile media outlets or frequently mentioned by other interviewees as prominent in this area. Given the prominence of the interviewees, we asked for and received consent to use their names. The interviews were conducted on Zoom and ranged in length from approximately 50 to 150 minutes. The practicing attorneys discussed how they got into this area of practice, their first cases, their current cases, their opinions about the 2011 DCL and the 2020 Title IX regulations, their understandings of appropriate due process in campus proceedings, their opinions of Title IX officers and campus adjudication procedures, the demographics of their clients and their relationships with other attorneys and organizations working on campus sexual assault. Interviews with other advocates covered similar ground but focused on their personal perspectives on the issue, and if they were associated with an advocacy organization, the goals of that organization. The overcorrection narrative emerged inductively in the interviews, as interviewees blamed both universities and the federal government for violating the due process rights of their clients. The interviewer queried the interviewees about strategies, efforts to disseminate their views and the extent to which they understood their activities as political.

Each interviewee was asked to name other attorneys and advocates working in the area of due process and campus sexual assault. The frequent repetition of the same names reassured us that we had identified individuals central to this legal niche. As socio-legal scholars have long observed, lawyers within a particular legal niche become "repeat players," actors whose routine involvement in an area of law offers specific advantages, including expertise, credibility and the ability to advance the long-term interests of similarly situated litigants who serve as their prospective clients (Galanter 1990; Lempert 1976). Interviewees let us know that they represented many student respondents, which clued us into their repeat player status. Appendix A also lists how many cases in the data set each of the attorneys we interviewed represented.

As these individuals wrote and spoke prolifically, we also collected and analyzed their writings (including published books, law review articles, website materials, press

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releases and profiles in newspapers). We analyzed these materials for references to the overcorrection narrative and connections to other movement actors.

Legal complaints as narrative texts

As Bloomberg Law generated a list of all attorneys of record for each case, we also identified the lawsuits in our sample represented by our interviewees. This enabled us to trace the language that they used in their initial complaints. Legal complaints set out the facts and legal reasons that the plaintiff believes are sufficient to support a claim against the defendant, and we were interested in how attorneys narrated these issues in their legal briefs.

Prior scholarship found that legal complaints are an effective way to disseminate narratives, as these texts are an enticing draw for journalists, both for their colorful storytelling and their accessibility (Haltom 1998). Haltom and McCann's (2004, 172) study of media coverage of tort law cases, for example, finds that newspapers tend to pay disproportionate attention to the "frivolous filings" and "wild charges and countercharges" of lawsuit complaints. They note that even when court filings are decisively debunked during trial, "their discrediting usually takes a back seat to reporting that focuses on the informal, emotionally laden expressions of claiming and blaming" (2004, 172). Importantly, in the case of campus sexual assault, Behre (2019) further observes that legal complaints are often the only public record in cases of campus sexual assault, as the Family Educational Rights and Privacy Act (FERPA) prevents schools from releasing details of investigations.

We were curious, then, about whether due process lawyers were using legal complaints to communicate with audiences beyond the judge. While any zealous attorney may seek to advance the interests of a client (and/or build a legal practice) by seeking media attention for their case, political storytelling often takes a distinct form of argumentation. For instance, are the facts asserted in the complaint limited to describing the harmful actions of the defendant or do they extend to political actors beyond the parties to the lawsuit? Is the complaint focused on the elements necessary to establish a legal claim against the defendant, or is the complaint making broader political assertions unrelated to the cause of action?

Following this intuition, we instructed coders to note any mentions of the 2011 DCL and other Obama-era guidance during the initial coding. The second author then inductively coded how the attorneys characterized the relevance of the DCL to the alleged causes of action. Independent of the third author's interviews, the second author similarly identified elements of the overcorrection narrative within the legal complaints.

Legal complaints, repeat players and narrative amplification

After finding that due process attorneys embedded the overcorrection narrative in their legal complaints, we sought to trace the channels through which the narrative contained in the legal complaints made its way into the media. We searched the ProQuest news database, which covers 1,355 U.S. news titles, for news articles mentioning either attorneys or lawsuits in our sample. This enabled us to analyze the coverage these attorneys received, including whether they were quoted directly and whether their complaints were quoted.

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We further noted when journalists gave repeat players standing to opine about campus sexual assault as a general issue, beyond the interests of individual clients. Were lawyers speaking, in other words, about the facts and law specific to their cases, or about the role of the federal government in creating a due process crisis on college campuses in general? We also attended to how these articles characterized the lawyers' expertise. It is one thing for a journalist to report on a lawyer's experience or proficiency in a specialized area of law or to observe how many years a lawyer has been practicing in an area of law. But when reporters instead highlight *how many cases* of a particular kind a lawyer has litigated, that introduces a different kind of narrative. The quantification of lawsuits in this way becomes a story about the litigation trend itself – and the problem it represents – rather than the legal expertise of the lawyer. Thus, to track the dissemination of the overcorrection narrative – we examined the ways news articles referenced the number of student respondents the lawyers had represented.

In addition to news coverage of our lawsuits, we also searched ProQuest, attorney websites and the Internet for any press releases issued by attorneys in relation to their cases. Some law firms appeared to distribute press releases in ways that got picked up by ProQuest, while others archived their press releases on their websites. We did not systematically collect all possible press releases, but we did collect enough examples to confirm that repeat player attorneys regularly deployed them.

Tracking attorney political activities

From interviews and from the attorneys' writings, we became aware that their political involvement did not end with embedding the overcorrection narrative in legal complaints or engaging with the media. They also told us about their relationship to advocacy organizations, public speaking and testimony before Congress.

Analysis of websites

To analyze the connections between attorneys and political advocacy organizations, we scrutinized the websites of repeat player law firms and political advocacy organizations. We not only assessed the communication strategies of these groups (identifying the ways in which organizations published their press releases and news analyses and reproduced communications from other organizations in the movement) but also mapped the links between these groups. For example, we looked to see if attorneys sat on the board of directors of political advocacy organizations in the movement or if their private practices were promoted on the websites of such organizations.

Department of Education notice and comment submissions

In November 2018, the Department of Education published a notice of proposed rulemaking to amend how campuses should handle sexual assault under Title IX, initiating a public comment period. The Department received over 100,000 comments, all of which are publicly available.[7] We were interested to see whether repeat player attorneys were involved in these efforts to re-write Title IX regulations. We searched public comments for submissions by the repeat player attorneys in our sample and analyzed whether their statements included the overcorrection narrative.

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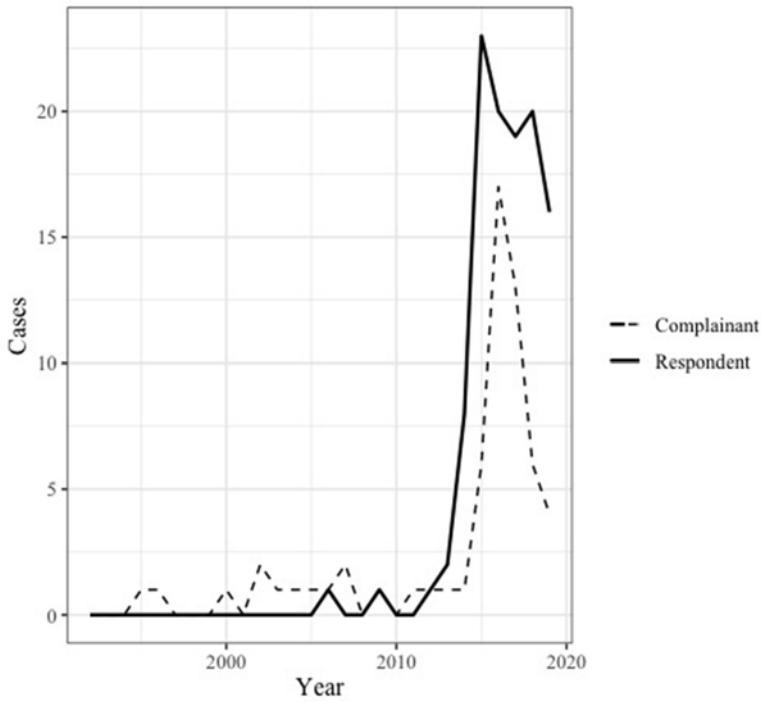

Figure 1. Number of lawsuits by plaintiff type, 1992–2019.

Results

Litigation patterns

We begin by describing shifts in litigation at the heart of the political contest over Title IX. The overcorrection narrative claims that, in response to the 2011 DCL, schools went too far in their efforts to support complainants, implementing policies that violated the rights of students accused of sexual misconduct. Proponents of this narrative point to the rise in litigation involving respondent plaintiffs after the 2011 DCL as evidence that campus investigation and adjudication processes had tilted unfairly against the accused. We find that respondent-initiated lawsuits against the 381 schools in our sample did increase sharply after 2011 (see Figure 1). Between 1992 and 2012, there were only a total of three respondent-initiated lawsuits. Since 2013, schools were targeted with an average of 15 respondent lawsuits per year, peaking at 23 lawsuits in 2015.

But equally important for contextualizing the overcorrection narrative: *complainant-initiated lawsuits also increased over the same period.* Prior to 2013, one to two complainant-initiated lawsuits were filed per year; after 2013, an average of seven complainant lawsuits were filed per year. Complainant-initiated lawsuits against schools peaked at 17 cases in 2016. Similarly, complaints filed with the OCR against universities alleging Title IX violations involving sexual harassment trended upward starting in 2006 and skyrocketed after 2009 (Reynolds 2019).

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That lawsuits increased over this period for *both* complainants and respondents[8] complicates the narrative that campus adjudication processes had tilted unfairly against respondents. The parallel litigation trends instead suggest that both complainants and respondents were dissatisfied with campus adjudication processes after 2011. With students increasingly recognizing and claiming sexual misconduct as an actionable rights violation under Title IX, more students filed complaints with their schools (Cantalupo 2021; Heldman et al. 2018; Perez-Pena 2013; Reynolds 2019) and more students entered the campus adjudication process – as both complainants and respondents. That legal grievances about those adjudication processes have increased on both sides is thus not surprising (Buzuvis 2017).

But the respondent side disseminated a narrative *about litigation trends* to shape the debate on campus sexual assault.[9] Respondent-initiated litigation came to have a story – complete with protagonists (promising young men), antagonists (universities and the Department of Education), a contest over rights and a proposed resolution: requiring colleges and universities to adjudicate cases with greater due process protections for respondents (Behre 2019).

While the overcorrection narrative uses the *filing* of lawsuits as evidence of school violations of the rights of accused students, the *outcomes* of these cases do not support this claim. Among the 97 respondent-initiated cases that reached an outcome by 2020 (when we completed data collection), 51 cases – or more than half – were outright dismissed by the court. The courts ruled in favor of the school defendant in 12 cases (14%). In 28 cases (29%), the parties reached a settlement. The courts vindicated the respondent plaintiffs' claims in only five cases (5%). Stated more succinctly, in most respondent-initiated cases (65%) courts determined either that the respondent plaintiff failed to state a viable cause of action or that the defendant school did not violate the due process or Title IX rights of the respondent plaintiff. Despite this track record, these lawsuits formed the basis for the movement's narrative that the Department of Education had overcorrected for past deficiencies and was now violating the rights of the accused students. Respondent lawyers, we find, played a key role in constructing this political narrative.

Private practice lawyers as political actors

After the 2011 DCL, individuals found responsible for – or accused of – sexual assault sought attorneys to represent them in on-campus procedures and in litigation. The attorneys approached in the first years after 2011 did not have expertise or reputation in this area but quickly acquired both. As their caseloads increased, a new area of legal practice developed – what California attorney Mark Hathaway referred to as a "niche within a niche within a niche."[10]

The attorneys we interviewed reported that they came to specialize in representing students accused of sexual assault incidentally. For example, Eric Rosenberg, Patricia Hamill, Deborah Gordon and Mark Hathaway each reported receiving calls from parents of accused students – sometimes family friends with sons in college. As media coverage of campus sexual assault remained high in the early years of this legal practice (Behre 2019), the public became familiar with the names of attorneys developing expertise representing accused students. Attorney Andrew Miltenberg – variously referred to in the media as the "go to lawyer" for male college students

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accused of sexual assault (Kutner 2015) or as the "due process guy" or the "rape guy lawyer" (Joyce 2017) – had spent much of his career as a business litigator. In 2013, he received his first campus sexual assault case: an international student who called to say he had been falsely accused of rape (Joyce 2017). While Miltenberg had litigated cases of defamation before, he thought the case also involved a violation of due process. As the *New York Times* observed: "Miltenberg lost the case but found a calling" (Joyce 2017). The national media attention Miltenberg received for his cases "brought more and more young men out into the open" (Kuta 2016). By 2017 he claimed, "My phone rings off the hook" (Kelly 2017).

Unlike many studies of attorneys in the legal mobilization literature, these attorneys were not funded by wealthy donors, private foundations or other organizations that might constitute a movement's support structure (Hollis-Brusky and Wilson 2020). This was a profitable new area of legal practice. Miltenberg, who conceded he was "a little expensive"[11] due to his experience in this area of law, charged clients between $25,000 and $30,000 for representation from the beginning to the end of the campus adjudication process. Litigating a case in court could cost several hundred thousand dollars more.

As the cases came fast and furious, attorneys, including those we interviewed, became "repeat players" in this domain (Galanter 1990; Lempert 1976). In the spring of 2022, Andrew Miltenberg claimed to have filed "close to 100" respondent Title IX cases, including 23 in our sample (see Appendix A).[12] Similarly, Joshua Engel was the attorney of record in 10 cases in our sample; Kimberly Lau represented 8; and Deborah Gordon represented 4. Although we only captured litigation against a sample of schools, the dominance of these individuals in this domain was evident. Beyond our sample, Lau's law firm website (Warshaw Burstein LLP, n.d.) claimed Lau had represented students in over 200 disciplinary proceedings, Eric Rosenberg claimed in an interview that his firm has handled "hundreds" of cases[13] and Justin Dillon's law firm website (KaiserDillon PLLC, n.d.) reported that Dillon had filed lawsuits at more than a hundred schools.

Many of the most prominent attorneys in this legal niche became politicized by the work of representing students accused of sexual misconduct. Their work began to include political advocacy, seeking not just a remedy for their client but to change the regulatory structure that shapes university policies and practices. Patricia Hamill noted in her interview how she began to see the issue as one where she could make an impact:

> [A]s a lawyer, I've never been in a practice where I actually thought I could influence anything. … It's two corporations that are suing each other. The law is the law. And this area has been exciting as a lawyer to possibly use the courts and use the court system to affect change. And so that is sort of what brought me into this level of not just being a lawyer who is going to go look up the law, and I'm going to write a brief, and we're good to go. This was an open area.[14]

In media interviews, Miltenberg described a similar shift from being "just a lawyer," to "an outspoken reformer" (Kelly 2017): "This is an area that, over the last couple of years, I tend to be motivated by a little bit of healthy outrage" (Kuta 2016).

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It was at this point that some respondent-side attorneys began to engage in political efforts to roll back the Obama-era regulatory guidance. Their role as private practice attorneys with specialized expertise in this area of law proved essential in constructing and disseminating the overcorrection narrative.

Embedding the narrative in legal complaints

A legal complaint in civil litigation describes the facts and legal reasoning behind the plaintiff's claims against the defendant and requests a remedy from the court. By design, all respondent lawsuits in our sample named the schools and/or their employees as defendants; in no case was the Department of Education also listed among the defendants. This means that the legal claims outlined by respondent plaintiffs should focus specifically on how the policies and practices of the school or its employees allegedly violated the plaintiff's rights. Referencing guidance issued by Obama's Department of Education was not necessary to establish whether a particular school's policies and practices constituted a violation of the respondent plaintiff's rights. Yet, more than one in every four respondent filings since 2011 (28 out of 111 respondent lawsuits) made explicit reference to the 2011 DCL. These references did not merely provide background information but explicitly asserted one of two claims: (1) that the 2011 DCL *directly pressured* the defendant school to adopt policies and practices that harmed the respondent plaintiff; or (2) the defendant school adopted harmful policies and practices to *demonstrate* to their students, the Department of Education, or the public its compliance with the 2011 DCL.

Of the 28 legal complaints that referenced the 2011 DCL, 14 made use of the first "direct pressure" narrative. Twelve of these fourteen cases were represented by at least one repeat player attorney, eight from the firm Nesenoff and Miltenberg. For example, in *Doe v. Purdue University et al* (2017), the respondent plaintiff alleged (through his attorneys at Nesenoff & Miltenberg) that Purdue University, its Board of Trustees and its employees violated his Fourteenth Amendment due process rights by "employing a Kafkaesque process in which there is no cross examination, no sworn testimony, [and] no hearing of any kind." The complaint goes on to allege that defendants "were pressured by the Obama Administration's DOE into following the Title IX investigative and adjudicatory process mandated by the 'April 2011 Dear Colleague Letter' regardless of what otherwise would be due process consideration." Note that the 2011 DCL did not mandate or require particular actions on the part of schools but instead advised schools of their Title IX obligations to promptly and equitably respond to claims of sexual violence. In the absence of an OCR resolution agreement requiring corrective actions on the part of a given school,[15] a claim that school employees were pressured into violating the due process rights of an accused student makes little sense as a *legal* argument.

In the second line of argumentation involving the 2011 DCL (seen in 12 out of the 28 cases that mention the 2011 DCL in the complaint),[16] plaintiffs acknowledged that the DCL involved only nonbinding recommendations to colleges and universities; yet, with the multiplicity of external pressures – from the OCR, student activism and media scrutiny – schools felt compelled to demonstrate compliance with Title IX by finding the accused responsible. For instance, in the case of *Doe v. Denison University et al* (2016), the plaintiff alleges that Denison University violated his Title IX rights by creating

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"an environment in which male students accused of sexual assault … are fundamentally denied due process as to be virtually assured of a finding of responsibility." The complaint asserted that "Denison's investigation and/or discipline of John Doe was taken in order to demonstrate to DOE/OCR, President Obama's Administration, and/or the general public that Denison is aggressively disciplining male students accused of sexual assault."

Both narratives advance the unprecedented and exceedingly unusual argument (Bolger et al. 2021) that the existence of these putative "external pressures" constitutes evidence of rights violations. Here, it is important to emphasize that the "external pressure" on universities to allegedly discriminate on the basis of sex is attributed to the regulatory agency charged with enforcing Title IX. Bolger and her colleagues highlight the striking paradox of this argumentation: "[A] civil rights agency's enforcement efforts are, apparently, evidence of sex discrimination against plaintiffs accused of the very discrimination the agency sought to ameliorate" (2021, 776).

Legal complaints as a media source

Writing the overcorrection narrative into legal complaints enabled its wider dissemination. Two observations in this regard are important. First, the intended audience of these textual references to the 2011 DCL was not solely the judge in any individual case, but the broader public. When filing these legal complaints, lawyers routinely distributed press releases. These press releases not only referenced the legal claims but also elaborated the political claims relating to the 2011 DCL. For example, a 2017 press release issued by Miltenberg's law firm first sets out the legal claims outlined in a pair of Title IX complaints against Drake University, but then goes on to elaborate the complaint against the Department of Education: "Both lawsuits contend that Drake's violation of Title IX was strongly influenced by a directive of the U.S. Department of Education's Office for Civil Rights (OCR), which encourages male gender bias and violation of due process rights during sexual misconduct investigations" (Nesenoff and Miltenberg LLP 2017). Miltenberg's quote in his law firm's press release then goes on to make a much broader claim about the Department of Education's "overreach" and its consequences:

> As a result of the U.S. Department of Education's unlawful directive, there has been a surge in colleges and universities mishandling investigations and wrongfully prosecuting male students for fear of losing federal funding. … These directives have resulted in a clear disregard for the due process rights of male college students and have created a culture of male-gender bias on campuses throughout the country (Nesenoff and Miltenberg LLP 2017).

The overcorrection narrative thus shows up *twice* in the process of filing a legal complaint: in the original text of the complaint and in the press release distributed by the attorneys of record.

Our second observation about the narrative text of complaints follows closely from the first: journalists draw from the text of complaints in their coverage of lawsuits. Indeed, it is presumably for this reason that attorneys issue press releases to

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accompany their complaints. A 2019 article in the *Detroit Free Press* illustrates this. Elaborating on a lawsuit stemming from a student's suspension at the University of Colorado-Boulder, the article relies almost exclusively on the text of the complaint in relating the facts of the case, including a direct quote from the complaint about "federal pressure": "CU Boulder's investigation and adjudication of Jane Roe's allegations were tainted by gender bias resulting from federal and local pressure to protect female victims of sexual violence, and to reform CU Boulder's policies to take a hard line against male students accused of sexual misconduct" (Jesse 2019). Similarly, the opening line of an article in the *Dayton Daily News* draws directly from the external pressure argument found in complaints: "Colleges and universities under intense public and federal pressure to tamp down on campus sexual assaults are facing mounting accusations that they rush to judgment against the accused with biased policies and poorly trained hearing boards" (Sweigart 2015). In this article, repeat player Joshua Engel, who at the time was representing accused students at six Ohio universities, amplifies the political claim from his complaint: "Schools are scared … They're scared that if they don't crack down and show they are tough on allegations of campus sexual assault, that the federal government is going to come in and take all their money"[17] (Sweigart 2015). Consistent with research demonstrating how frequently journalists draw from complaints in covering stories about litigation (Behre 2019; Haltom 1998; Haltom and McCann 2004), journalists frequently picked up the political arguments about the 2011 DCL found in complaints.

Repeat players and narrative amplification

References in complaints and news reporting about the "pressure" of the federal government on school disciplinary proceedings often involved identical phrasing, in part because it was the same attorneys who brought these cases. A small group of attorneys repeatedly advanced the message in their legal pleadings that the guidance was to blame for the alleged harm suffered by their clients. Indeed, among the 61 cases represented by at least 1 repeat player attorney, 25 cases (41%) contained the overcorrection narrative; in contrast, among the 50 cases not represented by a repeat player attorney, only 3 (6%; $p = 0.00$) mentioned the DCL.

Journalists used the repeat player status of these attorneys to further lend authority to the overcorrection narrative. When journalists introduced a lawyer in their news coverage, they did not merely refer to them as *experienced* or *proficient* in Title IX/due process law or reference the number of years they had been practicing; instead, they frequently referenced the *number* of lawsuits they had brought or the *number* of male clients they had represented – or they enumerated the string of schools the lawyers were suing. For example:

> Miltenberg, who has represented more than 100 accused male students at colleges and universities … (Hussein 2017a).

> Hamill has represented about two dozen male respondents in the past few years (Kutner 2015).

> Justin Dillon, a Washington-based lawyer who has defended dozens of students accused of sexual misconduct … (Press 2022).

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That journalists quantified the lawsuits in this way was not accidental: lawyers such as Miltenberg provided this information in press releases (Nesenoff and Miltenberg LLP 2017) and public-facing blogs and website posts. As we discuss below, advocacy organizations also referenced the number of cases brought by these attorneys in their press releases and news analysis on social media.

The aggregation of cases brought by repeat player attorneys served the overcorrection narrative in at least two ways: first, it evoked a sense of crisis. Journalists often used colorful language to exaggerate this impression, referring to a "growing tide" (Jesse 2019) or "surge" (Hussein 2017b) or "wave" (Wermund 2017b) or "string" of lawsuits (Kuta 2016). That there are so many of these lawsuits suggested a problem. Second, noting how many similar cases these attorneys have litigated also positioned them as experts who could comment not just on their own lawsuit but on the broader politics of campus sexual assault, including such issues as federal regulation of campus sexual assault.

To illustrate how these features of legal complaints and the lawyers who write them interacted to amplify the overcorrection narrative, let's return to the case of *Doe v. Purdue University et al* (2017). The respondent plaintiff alleged that Purdue University violated his due process rights in its handling of a report of sexual misconduct against him. A single, identical story on the lawsuit filing (presumably a newswire) appeared in local papers across Indiana – in the *Star Press* in Muncie (Hussein 2017d), the *Indianapolis Star* in Indianapolis (Hussein 2017b), the *Journal and Courier* in Lafayette (Hussein 2017e) and in the *Palladium*, in Richmond (Hussein 2017c). The journalist drew the facts of the case primarily from the legal complaint. The underlying incident is thus described from the perspective of the disciplined student, or the protagonist in this story. The student's lawyer, Andrew Miltenberg, was quoted directly in a way that established the antagonists and what they had done: "This student's hopes and dreams to serve his country as a Naval officer have been destroyed as the result of false accusations by an ex-girlfriend and the Kafkaesque disciplinary process at Purdue University." (The allusion to Kafka, recall, also appeared in the complaint.) The journalist highlighted Miltenberg's repeat player status ("Miltenberg, who has represented more than 100 accused male students at colleges and universities") before quoting his broader political claim about the problem of campus sexual assault: "[T]he male gender bias that exists at … many college campuses across the country assumes that accused male students are guilty until proven innocent." The story then included Miltenberg's overcorrection assertion (the causal link between events/characters), again drawn from the complaint, that it was the directives of the OCR that encouraged "male gender bias and violation of due process rights during sexual misconduct investigations." Finally, paralleling the language from the law firm Nesenoff & Miltenberg's stock press release, Miltenberg's legal associate Philip Byler observed that as a result of that directive "there has been a surge in universities mishandling investigations and wrongfully prosecuting male students for fear of losing federal funding" (Hussein 2017a). Thus, the readership in Indiana comes away from the coverage of this lawsuit with one version of the facts of the case (as told by the accused student in his complaint) and an understanding of the Department of Education as having pressured universities to change their policies and practices in ways that victimize promising young men accused of sexual misconduct.

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Leveraging litigation: ties to political advocacy organizations

The private practice attorneys advocating for students accused of campus sexual assault did not work for legal or political advocacy organizations as staff or pro bono attorneys or on legal retainer. Their legal practice was lucrative and did not require the kinds of funders identified by other scholars of legal mobilization (Epp 1998; Hollis-Brusky and Wilson 2020; Teles 2008). But we nevertheless found links between many of the repeat player attorneys and political advocacy organizations. Here, we make visible these ties and consider how they helped to establish a throughline between the individual narratives embedded in legal complaints and the political claims about litigation trends advanced by advocates.

Political advocacy organizations defending the due process rights of accused students range from the non-partisan American Civil Liberties Union (ACLU) to right-leaning organizations such as the Foundation for Individual Rights and Expression (FIRE) to conservative groups such as the Federalist Society. Several single-issue groups such as Families Advocating for Campus Equality (FACE), Title IX for All, Save Our Sons and Stop Abusive and Violent Environments (SAVE) were founded after the 2011 DCL to protect students (primarily young men) accused of or disciplined for campus sexual misconduct. Some longstanding men's rights groups such as the National Coalition for Men and A Voice for Men took up the cause as well. FACE and FIRE, discussed below, are arguably the most consequential organizations in this space, given their access to policymakers on matters involving Title IX.

FACE[18] described its mission as "Supporting and advocating for equal treatment and due process for those affected by inequitable Title IX campus disciplinary processes." The organization's website was transparent that it sought to reform state- and federal-level laws and regulations, as well as adjudication processes "at every institution across the country." Their website was relentless in the production and distribution of news analysis, together with press releases and amplifying analyses from like-minded organizations.

The links between FACE and private practice lawyers are too numerous to fully catalog here, but we offer several illustrative examples. Several attorneys, including Miltenberg, Lau, Dillon and Rosenberg, served on the Board of Directors[19] of FACE. Susan Kaplan, another prominent attorney representing students accused of sexual misconduct, served on FACE's Board of Advisors. The FACE website linked accused students/families to KaiserDillon for advice.[20]

Similarly, FIRE's mission is to "defend and sustain the individual rights of all Americans," including, importantly, the right to due process.[21] Its website asserted:

> [O]n many campuses, the accused face "kangaroo courts" that lack fair procedures, in which the political viewpoint or institutional interests of the "judges" greatly affect the outcomes of trials. The accused are often charged with no specific offense, given no right to face their accusers, and sentenced with no regard for fairness or consistency.[22]

Like other advocacy organizations, FIRE showcased media coverage of private lawsuits brought by accused students on its website and social media platforms. With a full-time media representative on staff, it produced voluminous press releases and news

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commentary on issues relating to the Department of Education, Title IX and campus adjudication. FIRE's website featured a "Campus Due Process Litigation Tracker" to provide attorneys, students and the public with information about evolving law on campus adjudication.[23]

The relationship between advocacy organizations and private practice attorneys was reciprocal: advocacy organizations promoted the work of private practice attorneys, and many of these attorneys advertised the work of these organizations on their websites and in press releases. The "Resources" page on the website of repeat player Mark Hathaway's firm,[24] for example, linked families to a whole set of advocacy organizations, including A Voice for Men, Title IX for All, FACE, FIRE, the National Coalition for Men, SAVE and Save our Sons. The law firm KaiserDillon linked website visitors to both FACE and FIRE (KaiserDillon PLLC 2022). When Title IX for All recognized Andrew Miltenberg and his team as one of two "Distinguished Due Process Attorneys" "for the sheer number of students and families they've helped," Miltenberg's law firm issued a press release to showcase the award (Nesenoff & Miltenberg, LLP 2019). Thus, while it may appear that these individual private lawsuits were unconnected to the larger political effort to roll back Title IX enforcement, we find that political advocates knew of and advertised the work of the lawyers.

Tracking and aggregating lawsuits

The lawsuits brought by these attorneys also formed a cornerstone of the advocates' overcorrection narrative: *the litigation trend*. Regardless of the motivation for filing particular lawsuits – and irrespective of their outcomes – lawsuits can be strategically *grouped* and *counted* by political actors as sharing common features or grievances. These "congregations of cases," to borrow Galanter's (1990) term, can then be leveraged as cultural weapons that movement actors deploy in their efforts to frame social conditions as problematic and in need of repair. Political advocates systematically sought to track, count and narrate the litigation trend as evidence that schools overcorrected and violated the rights of accused men. The systematic aggregation of cases came from two primary sources: KC Johnson, a professor at Brooklyn College and author (with Stuart Taylor, Jr.) of the 2017 book, *The Campus Rape Frenzy: The Attack on Due Process at America's Universities*, and the organization Title IX for All, founded by men's rights activist Jonathan Taylor.

Johnson first came to the issue of campus sexual assault as a blogger covering the Duke lacrosse case[25] (Johnson and Taylor 2017). He viewed the media coverage of the Duke controversy as tilted unfairly toward victims with little attention to the rights of accused students. By 2015, two lawsuits against Amherst and Brandeis for their handling of sexual misconduct cases suggested to Johnson that "this might be an issue that needed attention":

> It was clear there was no one paying attention at that point in the media to litigation or to concerns expressed by accused students. I mean, there was FIRE that would say we had concerns with the process. But FIRE, at this point, wasn't looking at individual cases. So … I started looking.[26]

Johnson began to systematically track every lawsuit filed by a student accused of sexual misconduct since the DCL. Johnson's intent was to challenge – and ideally

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reverse – what he saw as a media discourse too sympathetic to complainants and to roll back the changes wrought by the 2011 DCL.[27] He did this not only by his active social media presence – posting a constant stream of analysis about campus sexual assault on X (formerly Twitter) (which often got picked up and reposted by advocacy organizations) but also by talking to the media directly, offering his dataset as evidence for his claims. Journalists frequently referenced his database in their stories and regularly quoted Johnson as an expert on campus sexual assault litigation. A *New York Times* article, for example, illustrates how journalists used Johnson's numbers to support a statement of the overreach argument:

> [A] growing movement of men's rights activists said the guidance went too far because it did not give those accused a chance to defend themselves through basic rights like cross-examination. More than 600 federal and state lawsuits have been filed by students accused of sexual misconduct since April 2011, when the Obama administration instituted its new policies, according to a database compiled by KC Johnson … (Hartocollis 2021).

The number typically cited in these news stories references the number of cases *filed*. There is no mention of the fact that the disposition of these cases has not favored the respondent plaintiffs. Nevertheless, when court filings are aggregated in this way, private lawsuits play a powerful role in creating the impression that there is a due process crisis on college campuses.

A second database, produced by the men's rights organization Title IX for All, served a similar function. Like other advocacy organizations, the website for Title IX for All includes a page of news articles and analysis and promotes the work of due process attorneys such as Andrew Miltenberg and Mark Hathaway as "pioneers" who litigate on behalf of accused students.[28] But it is its database of lawsuits that has attracted media attention. More expansive than Johnson's database, the organization tracked cases filed against universities by both students and faculty accused of Title IX related complaints. Like Johnson's database, journalists cite the Title IX for All numbers to support arguments about overcorrection:

> The fact that many universities were ill equipped to administer this parallel form of justice became evidence in the flood of litigation claiming due-process violations that followed. Title IX For All, which keeps a database of such lawsuits, says nearly 700 have been filed since 2011 (The Economist Intelligence Unit 2021).

The operating assumption is that the number of lawsuits filed since the 2011 DCL is evidence of a social problem. There is no mention of the striking increase in the number of lawsuits filed by complainants alleging that their universities had failed to respond appropriately to their sexual victimization during this same period (Behre 2019). The aggregation of respondent-initiated lawsuits by advocacy organizations provides journalists with a one-sided story of a national crisis.

Lobbying OCR: the overcorrection narrative finds its target

The overcorrection narrative constructed by political advocates from respondent lawsuits eventually reached the ears of allies in high places. In 2017, Donald Trump's new

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Secretary of Education, Betsy DeVos (herself a substantial donor to FIRE (Wermund 2017a)), announced she was rescinding the 2011 DCL and would host a series of listening sessions in preparation for issuing regulations to remake the Title IX campus adjudication system. In a speech at George Mason University in which DeVos denounced the Obama-era interventions for stripping accused students of their due process rights, she highlighted the litigation trend at the heart of the overcorrection narrative: "This failed system has … generated dozens upon dozens of lawsuits filed in courts across the land by students punished for sexual misconduct" (C-SPAN 2017).

In drafting new regulations, DeVos's OCR worked closely with social movement actors. In July 2017, FACE, SAVE and the National Coalition for Men Carolinas (a men's rights organization) met directly with DeVos (Barthélemy 2020). Staffers from these organizations participated in conference calls and offered legal advice (Barthélemy 2020; Strauss 2017). The Department of Education hired the main funder of SAVE to help draft the new regulations and teamed up with FACE to craft op-eds in support of the proposed regulations (Barthélemy 2020). Joe Cohn, former Legislative and Policy Director at FIRE, was also consulted.[29]

The lawyers who helped create and disseminate the overcorrection narrative were also active in this penultimate step toward rewriting the Title IX regulations. Attorney Cynthia Purcell-Garrett, Co-President of FACE, and repeat player Kimberly Lau were both personally invited to the DeVos listening sessions that took place on July 13, 2017 (Strauss 2017). More commonly, repeat player attorneys submitted comments during the public notice and comment period for the proposed regulations. Patricia Hamill helped to coordinate a group comment on behalf of "concerned lawyers" who represented accused students; the list of signatories included Susan Kaplan, Kimberly Lau, Justin Dillon and Cynthia Purcell-Garrett (Hamill et al. 2019). The appendix to their submission includes an excerpt from a piece by FIRE entitled "Mountain of evidence shows the Department of Education's prior approach to campus sexual assault was 'widely criticized and failing'" (Coward 2018). That evidence includes a list of federal court cases filed since 2011 involving due process complaints.

In May 2020, after receiving a record number of comments on the proposed regulations, the Department of Education released its final regulations, enshrining into law additional protections for accused students. When the Victim Rights Law Center sued in 2020 to prevent the new rules from going into effect, FACE and repeat player Andrew Miltenberg together submitted an amicus brief seeking to oppose their efforts (Miltenberg et al. 2020). KC Johnson's litigation database was cited throughout the brief.[30]

Discussion and conclusion

The overcorrection narrative emerged as a response to the perceived successes of the campus anti-rape movement and the Obama administration's commitment to reducing campus sexual misconduct (Behre 2019). After the 2011 DCL, advocates for accused students – from mothers of accused sons to private practice attorneys to individual rights and men's rights organizations – coalesced as a movement and began to publicly assert that schools had *overcorrected* in response to pressure from the Department of Education, stripping away due process protections of students accused of sexual misconduct. In particular, critics pointed to the rising number of lawsuits initiated

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by student respondents as evidence of widespread and systemic failings. This narrative of federal and university overreach was ultimately embraced by the Trump Administration, which rescinded Obama-era guidance and implemented regulations designed to strengthen protections for accused students.

If it was true that university adjudication processes after the 2011 DCL uniquely harmed accused students, then we might expect litigation rates for disciplined students to substantially outpace those of complainants. *But litigation rates for both complainants and respondents increased over the same period*. We find that the claim of federal overreach was a political narrative produced by social movement actors involving a new class of victims/protagonists (students disciplined for sexual misconduct), antagonists (schools and the federal government), a plot (schools and the federal government stripped accused students of due process rights) and a normative conclusion: the Department of Education ought to enact more rigorous due process protections for accused students. Our analysis demonstrates how private practice attorneys were central to the construction and dissemination of this narrative.

We suggest three ways in which private practice attorneys used individual lawsuits to construct the overcorrection narrative. First, legal complaints not only set out the facts and legal reasoning of a plaintiff's case but also contained political narratives about federal overreach and the need for regulatory reform. Second, private practice attorneys amplified their political claims in the media. Attorneys successfully sought attention for their lawsuits with press releases, and journalists not only reproduced the narratives written into complaints but treated repeat player attorneys as experts with standing to speak about federal and university overreach and the new class of "victims" (students accused of sexual misconduct) whose interests they represented. Finally, private practice attorneys maintained ties with political advocates who aggregated individual lawsuits in ways that permitted quantification of the alleged problem. Journalists then used these aggregate numbers as evidence of a new crisis.

While these empirical findings contribute to an understanding of an important shift in the politics of campus sexual assault, we also make contributions to social movement and socio-legal theory. Social movement scholars have long been attuned to the ways in which political actors simplify and condense the "world out there" to mobilize movement participants and generate public support (Benford and Snow 2000). One common method of constructing a "social problem" is to demonstrate its magnitude with numbers, statistics and trend lines. As Joel Best observed of claims-making: "The bigger the problem, the more attention it can be said to merit …." (1987, 106). Here, we find that litigation can be a source of numerical justification. By pointing to the number of lawsuits filed – without regard to their merits or their success in court – advocates can make a case that the litigation reflects a serious underlying problem. The 2020 election offers another striking illustration of this political tactic: Donald Trump and his advocates pointed to the dozens of lawsuits filed across multiple states after he lost the election as evidence that the election was rigged. Even though the vast majority of those lawsuits were ultimately dismissed, they contributed to Trump's political narrative that our voting processes can no longer be trusted.

More centrally, our findings contribute to socio-legal literatures on legal mobilization and cause lawyering. As scholars look beyond courts and legislatures to how reformers pursue legal change through culture – using narratives to transform public perceptions of the nature of the problem and what ought to be done about it – we

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offer two ways of extending this work. First, we make visible the political possibilities of the narratives deployed in conventional lawyering. The narrow focus in the legal mobilization literature on social movement actors, cause lawyers and their support structures has limited the scope of which lawsuits, lawyers and narratives we consider "political" for purposes of analysis. The roots (and arguably the influence) of the overcorrection narrative would be invisible to legal mobilization scholars looking for evidence of political strategy in litigation campaigns sponsored by advocacy organizations or to those searching for the funding streams that link foundations or private donors to litigation campaigns. Our focus on the career of a single narrative – from individual pleadings to the press to public websites to the highest levels of power – permits us a view of the throughline that connects individual stories of injustice and collective demands for legal reform. We find that private lawsuits have a capacity to serve as both the carrier of the story – woven into legal complaints – *and the story itself*: once aggregated, these "congregations of cases" (Galanter 1990) can be framed as evidence of a social problem.

Our second contribution follows closely from the first: we highlight the role of liberal legality in masking the politics of this work. Socio-legal scholars have made visible the support structures that enable legal mobilization campaigns – law schools, advocacy organizations, and foundations and other sources of funding (Epp 1998; Hollis-Brusky and Wilson 2020; Teles 2008). Our work focuses on why these structures are so hard to see. "Dark money" and private foundations, to take an obvious example, fund law firms and attorneys through channels that are intentionally hidden from the public eye. We suggest that liberal legalism – the cultural belief that law is separate from and distinct from politics – also plays an essential role in hiding the political influence of conventional lawyering. The roots of the overcorrection narrative in individual lawsuits have been both invisible and seemingly apolitical. Respondent-initiated lawsuits do not appear to be initiated or sponsored by political organizations. These cases have the veneer of a natural phenomenon, cases bubbling up from the earth because of some problem that lies beyond the view of the public. They are brought by credentialed attorneys with standing in the media, who can narrate a compelling story in part because their politics are masked in the apolitical language of law. And because American political culture treats law and politics as distinct, the claims – wrapped in the rhetoric of due process – sound like merely legal claims. They are not legible as political claims.

Our analysis shows how the narrative about litigation was authored, promoted and amplified by a web of social movement actors that extended from private practice attorneys to political advocates to the Secretary of Education. These actors constructed a narrative intended to shape the interpretation of respondent-initiated litigation as a social crisis. But as Murray Edelman once observed, the invocation of crisis is "a political act" (1988, 31). Declarations of crisis are designed to command attention and to divert interest from other competing issues. They are often intended to reinforce deference to traditional political arrangements (Haltom and McCann 2004). As survivor activists made visible the harms of campus sexual violence and as the Obama administration advised schools to do more to protect survivors' Title IX rights to an education free from sex discrimination, disciplinary procedures became a highly contested – and litigated – space. The overcorrection narrative was a reaction to this shifting terrain of campus sexual assault and an effort to return to the social

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arrangements that constituted campus life before the Obama intervention (Behre 2019). A question for future scholarship is whether the mechanisms of narrative production observed in this case could be used by any social movement seeking to mobilize support for legal reform or whether the success of this narrative rests with its content.

Relatedly, we offer one final observation about the intersectional inequalities of this case that we hope will spark future research in this area. The capacity of individuals to tell their stories through lawsuits is not available equally to everyone. Attorneys interviewed conceded that the cost of retaining their services was high. Lawyer Mark Hathaway described this as litigation among the "one-percenters."[31] The overcorrection narrative was thus constructed out of the stories of a particular group of individuals who had access to legal forums and legal practitioners. Add to this observation the weight of decades of socio-legal scholarship documenting the ways in which liberal legalism and the structures, processes and procedures of law tend to reproduce rather than disrupt social arrangements of power (Silbey 2005), and one wonders whether liberal legalism would similarly mask the politics of *all* legal claims, or whether liberal legalism is uniquely suited to masking claims that reinforce traditional hierarchies of power.

The construction and dissemination of the overcorrection narrative was, by many accounts, a successful movement strategy. Political advocates sought to create a narrative about a national crisis with the goal of rolling back the reform efforts of the Obama administration. Policymakers at the highest level of the Trump administration embraced that narrative and passed regulations intended to respond to it. We urge scholars to make it an empirical and theoretical priority to identify the politics behind private litigation.

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Notes

1. U.S. Department of Education (2011, April 4). Dear Colleague Letter [rescinded]. https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html (accessed June 23, 2021).

2. "Complainant" refers to the student who makes the report of campus sexual misconduct. "Respondent" refers to the student who must formally respond to the allegation.

3. The overcorrection narrative extends Behre's (2019) "disciplined student narrative." Our emphasis on *overcorrection* seeks to amplify the claim embedded in both individual lawsuits and social movement narratives that the 2011 DCL overcompensated for earlier deficiencies by "pressuring" schools to abrogate the rights of students accused or disciplined for sexual misconduct.

4. Note that while students of all genders experience sexual assault, approximately 20% of undergraduate women experience sexual assault (Muehlenhard et al. 2017) compared to approximately 7% of undergraduate men (Edwards et al. 2015).

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5. A related literature on the construction of social problems considers how certain issues come to be identified as social problems and successfully vie for the attention of targeted audiences (Hilgartner and Bosk 1988; Kucinskas 2018). This paper seeks to intervene more specifically in socio-legal debates about how cultural meanings about law are produced (Haltom and McCann 2004).
6. University of Michigan IRB approved the interview component of the project.
7. Comments can be searched and viewed on https://www.regulations.gov/docket/ED-2018-OCR-0064/comments (accessed July 8, 2024).
8. While the number of lawsuits brought by complainants parallels the number of lawsuits brought by respondents, the causes of action are distinct. Complainants are permitted by law (*Davis v. Monroe County Board of Education* (526 U.S. 629 (1999)) to sue their institution for a deliberate failure to respond to known harassment. This requires a complainant to demonstrate that someone with authority had (1) actual notice of sexual harassment or assault; and (2) notwithstanding such notice, that the institution responded with deliberate indifference; and (3) the harassment or assault was "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit." By contrast, respondent-side plaintiffs can challenge a school's disciplinary process or outcome by either alleging reverse discrimination – effectively a Title IX claim that they experienced anti-male gender discrimination – or a violation of their constitutional rights to due process of law (Buzuvis 2017).
9. Behre's (2019) analysis of "the student survivor narrative" is helpful as a contrasting strategy. The student survivor narrative also relied on quantification and aggregation, but it highlighted the statistical prevalence of campus sexual assault and the accumulation of multiple individual survivor stories. The visibility of this narrative peaked during the "new campus anti-rape movement" in the years from 2013 to 2016. With Trump's election and the countering of the student survivor narrative by due process advocates (Johnson and Taylor 2017, 13), the new campus anti-rape movement and its associated narrative lost steam (Brubaker 2019; Gronert 2019). Student survivors and their advocates did not construct a narrative around complainant-initiated litigation to draw attention to campus sexual assault or to counter due process advocates' focus on respondent-initiated litigation.
10. Interview (March 9, 2022).
11. Interview (March 10, 2022).
12. Interview (March 10, 2022).
13. Interview (April 7, 2022).
14. Interview (April 28, 2022).
15. When a student files a federal Title IX complaint with the Office for Civil Rights (OCR), the agency evaluates the allegations made in the complaint to determine whether investigation is warranted. Following an investigation, a school enters into a resolution agreement with OCR to voluntarily resolve Title IX violations by changing policies or practices. U.S. Department of Education Office for Civil Rights (OCR). Case Processing Manual (2015). https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf (accessed July 12, 2022).
16. Of these 12 cases, 10 were represented by at least 1 repeat player attorney, 5 from the firm Nesenoff and Miltenberg.
17. While the Office for Civil Rights has the power to withhold federal funding from schools in violation of Title IX, it has never done so.
18. Families Advocating for Campus Equality. https://www.facecampusequality.org/ (accessed October 12, 2023).
19. Families Advocating for Campus Equality. "Board of Directors." https://www.facecampusequality.org/board-of-directors (accessed October 31, 2022).
20. Families Advocating for Campus Equality. "Advice from Attorneys." https://www.facecampusequality.org/advice-from-attorneys#_ftn1 (accessed October 31, 2022).
21. Foundation for Individual Rights and Expression. "Mission." FIRE. https://www.thefire.org/about-us/mission/ (accessed October 31, 2022).
22. Foundation for Individual Rights and Expression. "Campus Rights: What We Defend." FIRE. https://www.thefire.org/about-us/campus-rights/ (accessed October 31, 2022).
23. Foundation for Individual Rights and Expression. "Campus Due Process Litigation Tracker." FIRE. https://www.thefire.org/research/campus-due-process-litigation-tracker/ (accessed October 31, 2022).
24. Hathaway Parker. "Online Resources for Title IX issues." https://www.hathawayparker.com/resources (accessed October 31, 2022).

https://doi.org/10.1017/lsr.2024.28 Published online by Cambridge University Press

25. In 2006, three members of the Duke University men's lacrosse team were accused of raping a stripper at a party hosted by the lacrosse team. The accuser was Black and attended North Carolina Central University, a historically Black school; all three Duke players were white. In 2007, the North Carolina Attorney General dropped all charges, declaring the accused players to be "innocent" and victims of a "tragic rush to accuse" (CNN.com 2007).
26. Interview (February 4, 2022).
27. Interview (February 4, 2022).
28. Title IX For All. "Title IX Lawsuits Database." https://titleixforall.com/distinguished-due-process-title-ix-attorneys/ (accessed July 1, 2022).
29. Interview (February 15, 2022).
30. When President Biden took office, his Department of Education again took up Title IX regulations. After another notice and comment period, the OCR released new regulations in 2024 which reversed some of the changes enacted by Secretary DeVos in the 2020 regulations (Hidalgo Bellows and Brown 2024).
31. Interview (March 9, 2022).

References

Associated Press. 2022. "Critics Say Campus Sex Assault Rules Fall Short and Need an Overhaul." *NPR*, June 17, 2022, sec. Education. https://www.npr.org/2022/06/17/1105791440/critics-say-campus-sex-assault-rules-fall-short-and-need-an-overhaul.

Austin, Sarat and Stuart A. Scheingold, eds. 2006. *Cause Lawyers and Social Movements*. Stanford, CA: Stanford University Press.

Barthélemy, Hélène. 2020. "How Men's Rights Groups Helped Rewrite Regulations on Campus Rape." *The Nation*. August 14, 2020. https://www.thenation.com/article/politics/betsy-devos-title-ix-mens-rights/.

Behre, Kelly Alison. 2019. "Deconstructing the Disciplined Student Narrative and Its Impact on Campus Sexual Assault Policy." *Arizona Law Review* 61 (4): 885–944.

Benford, Robert D. and David A. Snow. 2000. "Framing Processes and Social Movements: An Overview and Assessment." *Annual Review of Sociology* 26: 611–39.

Bennett, Daniel. 2017. *Defending Faith: The Politics of the Christian Conservative Legal Movement*. Lawrence, Kansas: University Press of Kansas.

Best, Joel. 1987. "Rhetoric in Claims-Making: Constructing the Missing Children Problem." *Social Problems* 34 (2): 101–21.

Black, Donald J. 1973. "The Mobilization of Law." *J. of Legal Studies* 2 (1): 125–50.

Bolger, Dana, Alexandra Brodsky and Sejal Singh. 2021. "A Tale of Two Title IXs: Title IX Reverse Discrimination Law and Its Trans-Substantive Implications for Civil Rights." *U.C. Davis Law Review* 55 (2): 743–99.

Boutcher, Steven. 2013. "Lawyering for Social Change: Pro Bono Publico, Cause Lawyering, and the Social Movement Society." *Mobilization: An International Quarterly* 18 (2): 179–96.

Brubaker, Sarah Jane. 2019. "Campus-Based Sexual Assault Victim Advocacy and Title IX: Revisiting Tensions between Grassroots Activism and the Criminal Justice System." *Feminist Criminology* 14 (3): 307–29.

Burstein, Paul. 1991. "'Reverse Discrimination' Cases in the Federal Courts: Legal Mobilization by a Countermovement." *The Sociological Quarterly* 32 (4): 511–28.

Burstein, Paul and Kathleen Monaghan. 1986. "Equal Employment Opportunity and the Mobilization of Law." *Law & Society Review* 20 (3): 355–88.

Buzuvis, Erin. 2017. "Title IX and Procedural Fairness: Why Disciplined-Student Litigation Does Not Undermine the Role of Title IX in Campus Sexual Assault." *Montana Law Review* 78 (1): 71–108.

Cantalupo, Nancy Chi. 2009. "Campus Violence: Understanding the Extraordinary through the Ordinary." *SSRN Scholarly Paper ID 1457343*. Rochester, NY: Social Science Research Network. https://papers.ssrn.com/abstract=1457343. (accessed August 30, 2024)

Cantalupo, Nancy Chi. 2021. "Comments for Consideration in the Department of Education's Comprehensive Review Implementing Biden E.O. 14021, Filed by Nancy Chi Cantalupo." SSRN Scholarly Paper ID 3870869. Rochester, NY: Social Science Research Network. https://doi.org/10.2139/ssrn.3870869. (accessed August 30, 2024)

https://doi.org/10.1017/lsr.2024.28 Published online by Cambridge University Press

CNN.com. 2007. "Cooper: What Went Wrong, What's Next." CNN.Com. April 11, 2007. http://www.cnn.com/2007/LAW/04/11/duke.cooper/index.html.
Coleman, Christopher, Laurence D. Nee and Leonard S. Rubinowitz. 2005. "Social Movements and Social-Change Litigation: Synergy in the Montgomery Bus Protest." *Law and Social Inquiry* 30 (4): 663–738.
Coward, Tyler. 2018. "Mountain of Evidence Shows the Department of Education's Prior Approach to Campus Sexual Assault Was 'Widely Criticized' and 'Failing.'" *FIRE*(blog). November 15, 2018. https://www.thefire.org/mountain-of-evidence-shows-the-department-of-educations-prior-approach-to-campus-sexual-assault-was-widely-criticized-and-failing/.
C-SPAN, dir. 2017. *Education Secretary DeVos on Title IX*. George Mason University. https://www.c-span.org/video/?433696-1/education-secretary-devos-title-ix. (accessed August 30, 2024).
Edelman, Murray J. 1988. *Constructing the Political Spectacle*. Chicago: University of Chicago Press.
Edwards, Katie M., Kateryna M. Sylaska, Johanna E. Barry, Mary M. Moynihan, Victoria L. Banyard, Ellen S. Cohn, Wendy A. Walsh and Sally K. Ward. 2015. "Physical Dating Violence, Sexual Violence, and Unwanted Pursuit Victimization: A Comparison of Incidence Rates among Sexual-Minority and Heterosexual College Students." *J. of Interpersonal Violence* 30 (4): 580–600.
Ellis, Ryan D. 2013. "Mandating Injustice: The Preponderance of the Evidence Mandate Creates a New Threat to Due Process on Campus." *Review of Litigation* 32: 65–90.
Ellman-Golan, Emma. 2017. "Saving Title IX: Designing More Equitable and Efficient Investigation Procedures." *Michigan Law Review* 116 (1): 155–86.
Epp, Charles R. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago, IL: University of Chicago Press.
Ewick, Patricia and Susan S. Silbey. 1995. "Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative." *Law & Society Review* 29 (2): 197–226.
Fries, Alexandra. 2013. "Student-on-Student Sexual Assault Policy: How a Victim-Centered Approach Harms Men." *J. of College & University Law* 39 (3): 633–57.
Galanter, Marc. 1983a. "Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Know) about Our Allegedly Contentious and Litigious Society." *UCLA Law Review* 31 (1): 4–71.
Galanter, Marc. 1983b. "The Radiating Effects of Court." In *Empirical Theories About Courts*, edited by Keith O. Boyum, 117–42. New York: Longman.
Galanter, Marc. 1990. "Case Congregations and Their Careers." *Law & Society Review* 24 (2): 371–396.
Gould, Jon B. 2005. *Speak No Evil: The Triumph of Hate Speech Regulation*. Chicago, IL: University of Chicago Press.
Gronert, Nona Maria. 2019. "Law, Campus Policy, Social Movements, and Sexual Violence: Where Do We Stand in the #metoo Movement?" *Sociology Compass* 13 (6): e12694.
Grunewald, Ralph. 2023. *Narratives of Guilt and Innocence: The Power of Storytelling in Wrongful Conviction Cases*. New York: New York University Press. First edition. NYU Press Scholarship Online
Halley, Janet. 2015. "Trading the Megaphone for the Gavel in Title IX Enforcement." *Harvard Law Review* 128 (103): 103–116.
Haltom, William. 1998. *Reporting on the Courts: How the Mass Media Cover Judicial Actions*. Chicago: Nelson-Hall Publishers.
Haltom, William and Michael W. McCann. 2004. *Distorting the Law Politics, Media, and the Litigation Crisis*, The Chicago Series in Law and Society. Chicago: University of Chicago Press.
Hamill, Patricia M., Lorie K. Dakessian, and David Rudovsky. 2019. "Comments of Concerned Lawyers and Educators in Support of Fundamental Fairness for All Parties in Title IX Grievance Proceedings." https://www.thefire.org/research-learn/comments-concerned-lawyers-and-educators-support-fundamental-fairness-all-parties (accessed 30 August 2024).
Handler, Joel F. 1978. *Social Movements and the Legal System: A Theory of Law Reform and Social Change*. Institute for Research on Poverty Monograph Series. New York: Academic Press.
Harris, Samantha and KC Johnson. 2019. "Campus Courts in Court: The Rise of Judicial Involvement in Campus Sexual Misconduct Adjudications." *N.Y.U. J. of Legislation & Public Policy* 22 (1): 49–127.
Hartocollis, Anemona. 2021. "Columbia Settles a Complicated Sexual Assault Case." *The New York Times*, January 11, 2021, sec. U.S. https://www.nytimes.com/2021/01/11/us/columbia-sexual-assault.html.
Heldman, Caroline, Alissa R Ackerman and Ian Breckenridge-Jackson. 2018. *The New Campus Anti-Rape Movement: Internet Activism and Social Justice*. Lanham: Lexington Books.

https://doi.org/10.1017/lsr.2024.28 Published online by Cambridge University Press

Hendrix, Barclay Sutton. 2012. "A Feather on One Side, A Brick on the Other: Tilting the Scale against Males Accused of Sexual Assault in Campus Disciplinary Proceedings." *Georgia Law Review* 47 (2): 591–622.

Hidalgo Bellows, Kate and Sarah Brown. 2024. "Colleges, the Title IX Changes are Finally Here. What's in Them?" *The Chronicle of Higher Education*, April 19, 2024, sec. News. https://www.chronicle.com/article/colleges-the-title-ix-changes-are-finally-here-whats-in-them.

Hilgartner, Stephen and Charles L. Bosk. 1988. "The Rise and Fall of Social Problems: A Public Arenas Model." *American J. of Sociology* 94 (1): 53–78.

Hollis-Brusky, Amanda and Joshua C. Wilson. 2020. *Separate but Faithful: The Christian Right's Radical Struggle to Transform Law & Legal Culture*. Studies in Postwar American Political Development. Oxford, New York: Oxford University Press.

Hussein, Fatima. 2017a. "Notre Dame Student Fights 'Dating Violence' Expulsion." *IndyStar*, May 1, 2017. https://www.indystar.com/story/news/2017/05/01/university-assault-investigations-unfair-accused/100876348/.

Hussein, Fatima. 2017b. "Suspended Male Purdue Student Sues Claiming Sex Bias." *IndyStar*, January 26, 2017, sec. News. https://www.indystar.com/story/news/2017/01/26/suspended-maled-purdue-student-sues-claiming-sex-bias/96988476/.

Hussein, Fatima. 2017c. "Suspended Purdue Student Sues." *Palladium - Item*, January 30, 2017, sec. News.

Hussein, Fatima. 2017d. "Suspended Student Sues, Claims Sex Bias." *Star Press*, January 30, 2017. 1862739154. Global Newsstream. https://proxy.lib.umich.edu/login?url=https://www.proquest.com/newspapers/suspended-student-sues-claims-sex-bias/docview/1862739154/se-2?accountid=14667.

Hussein, Fatima. 2017e. "Suspended Student Sues, Claims Sex Bias." *J. & Courier*, January 28, 2017, sec. News.

Jesse, David. 2019. "Campus Assaults: Accused Win More: As More Cases Filed, Courts Rule Due Process Violations." News. *Detroit Free Press*. March 15, 2019. https://www.freep.com/story/news/education/2019/03/15/campus-sexual-assault-cases/3160325002/.

Johnson, KC and Jonathan Taylor. 2017. *The Campus Rape Frenzy: The Attack on Due Process at America's Universities*. New York: Encounter Books.

Joyce, Kathryn. 2017. "The Takedown of Title IX." *New York Times* (Online). New York, United States: New York Times Company. December 5, 2017. https://www.proquest.com/docview/1972169521/abstract/57CDDF99ADE74B58PQ/1.

Kairys, David. 1998. *The Politics of Law: A Progressive Critique*. *Third Edition*. Edited by Rene Cramer. New York: Basic Books.

KaiserDillon PLLC. 2022. "Campus Disciplinary Defense | KaiserDillon PLLC - Law Firm." KaiserDillon PLLC, https://www.kaiserdillon.com/practices/campus-disciplinary-defense/ (accessed July 6, 2022).

KaiserDillon PLLC. n.d. "Justin Dillon." KaiserDillon PLLC, https://www.kaiserdillon.com/attorneys/justin-dillon/ (accessed July 6, 2022).

Keck, Thomas Moylan. 2014. *Judicial Politics in Polarized Times*. Chicago, IL; London, England: The University of Chicago Press.

Kelly, Mike. 2017. "NJ Lawyer at Center of Rape Debate: Attorney Takes Lead in Defending Men Accused of Assault." *Asbury Park Press*, 2017.

Kucinskas, J. 2018. "Bridging Social Movements and Social Problems." In *Cambridge Handbook of Social Problems*, edited by A. Javier Treviño, 99–117. Cambridge: Cambridge University Press.

Kuta, Sarah. 2016. "'Healthy Outrage' Fuels Attorney Suing CU, Other Schools on Behalf of Men Accused of Sexual Assault." https://www.dailycamera.com/2016/09/02/healthy-outrage-fuels-attorney-suing-cu-other-schools-on-behalf-of-men-accused-of-sexual-assault/ (accessed August 30, 2024).

Kutner, Max. 2015. "The Other Side of the College Sexual Assault Crisis." *Newsweek*. https://www.newsweek.com/2015/12/18/other-side-sexual-assault-crisis-403285.html (accessed December 10, 2015).

Lehoucq, Emilio and Whitney K. Taylor. 2019. "Conceptualizing Legal Mobilization: How Should We Understand the Deployment of Legal Strategies?" *Law & Social Inquiry* 45 (1): 166–93.

Lempert, Richard O. 1976. "Mobilizing Private Law: An Introductory Essay." *Law & Society Review* 11 (2): 173–90.

Levitsky, Sandra R. 2006. "To Lead with Law: Reassessing the Influence of Legal Advocacy Organizations in Social Movements." In *Cause Lawyers and Social Movements*, edited by Austin Sarat and Stuart A. Scheingold, 145–63. Palo Alto: Stanford University Press.

https://doi.org/10.1017/lsr.2024.28 Published online by Cambridge University Press

Lipka, Sara. 2016. "What the Future Holds for the Federal Crackdown on Campus Sexual Assault." *The Chronicle of Higher Education*. July 31, 2016. https://www.chronicle.com/article/what-the-future-holds-for-the-federal-crackdown-on-campus-sexual-assault/?cid2=gen_login_refresh&cid=gen_sign_in.

Marshall, Anna-Maria and Daniel Crocker Hale. 2014. "Cause Lawyering." *Annual Review of Law and Social Science* 10 (1): 301–20.

McCammon, Holly. 2001. "Labor's Legal Mobilization: Why and When Do Workers File Unfair Labor Practices?" *Work and Occupations* 28 (2): 143–75.

McCann, Michael. 1991. "Legal Mobilization and Social Reform Movements: Notes on Theory and Its Application." In *Studies in Law, Politics, and Society: A Research*, edited by Austin Sarat, and Susan S Silbey. Vol. 11, 225-254. Greenwich (Conn.); London: JAI Press.

McCann, Michael. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization. Language and Legal Discourse*. Chicago, IL: University of Chicago Press.

McCann, Michael. 2006. "Law and Social Movements: Contemporary Perspectives." *Annual Review of Law and Social Science* 2: 17–38.

Miltenberg, Andrew, Tara J. Davis and Cynthia P. Garrett. 2020. "Brief of Families Advocating for Campus Equality as Amicus Curiae in Opposition to Plaintiffs' Motion for Preliminary Injunction or Section 705 Stay." https://www.facecampusequality.org/s/FACE-NY-AMICUS.pdf (accessed August 30, 2024).

Muehlenhard, Charlene L., Zoë D. Peterson, Terry P. Humphreys and Kristen N. Jozkowski. 2017. "Evaluating the One-in-Five Statistic: Women's Risk of Sexual Assault while in College." *The J. of Sex Research* 54 (4–5): 549–76.

Nesenoff and Miltenberg LLP. 2017. "Former Drake University Trustee Files Title IX Retaliation Lawsuit Against School In Disabled Son's Wrongful Sexual Assault Investigation." PR Newswire. February 22, 2017. https://www.prnewswire.com/news-releases/former-drake-university-trustee-files-title-ix-retaliation-lawsuit-against-school-in-disabled-sons-wrongful-sexual-assault-investigation-300411636.html.

Nesenoff & Miltenberg, LLP. 2019. "Title IX Attorney Miltenberg Recognized As 'Distinguished Due Process Attorney.'" December 5, 2019. https://www.prnewswire.com/news-releases/title-ix-attorney-miltenberg-recognized-as-distinguished-due-process-attorney-300970288.html.

O'Connor, Karen. 1980. *Women's Organizations' Use of the Courts*. Lexington, Mass: Lexington Books.

Olson, Susan M. 1984. *Clients and Lawyers: Securing the Rights of Disabled Persons*. Contributions in Legal Studies. 0147-1074; No. 28. Westport, Conn: Greenwood Press.

Perez-Pena, Richard. 2013. "College Groups Connect to Fight Sexual Assault." *The New York Times*, March 20, 2013, Late Edition, sec. A. 14. https://www.nytimes.com/2013/03/20/education/activists-at-colleges-network-to-fight-sexual-assault.html.

Peterson, Alyssa and Olivia Ortiz. 2016. "A Better Balance: Providing Survivors of Sexual Violence with 'Effective Protection' against Sex Discrimination through Title IX Complaints." *The Yale Law J.* 125 (7): 2132–55.

Polletta, Francesca. 2006. *It Was like a Fever: Storytelling in Protest and Politics*. Chicago: University of Chicago Press.

Reynolds, Celene. 2019. "The Mobilization of Title IX across U.S. Colleges and Universities, 1994-2014." *Social Problems* 66 (2): 245–73.

Rosenberg, Gerald N. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* American Politics and Political Economy Series. Chicago: University of Chicago.

Rudovsky, David, Stephanos Bibas, Shyamkrishna Balganesh, Mitchell Berman, et al. 2015. "Open Letter from Members of the Penn Law School Faculty," February 18, 2015. http://media.philly.com/documents/OpenLetter.pdf.

Sarat, Austin and Stuart A. Scheingold. 2005. *The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice. The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice*. Stanford, Calif: Stanford Law and Politics.

Scheingold, Stuart A. 1974. *The Politics of Rights: Lawyers, Public Policy, and Political Change*, 224. New Haven: Yale University Press.

Scheingold, Stuart A. and Austin Sarat. 2004. *Something to Believe In: Politics, Professionalism, and Cause Lawyering*. Stanford, Calif: Stanford Law and Politics.

Schneider, Elizabeth M. 1986. "The Dialectic of Rights and Politics: Perspectives from the Women's Movement." *New York University Law Rev.* 61 (4): 589–653.

https://doi.org/10.1017/lsr.2024.28 Published online by Cambridge University Press

Silbey, Susan S. 2005. "After Legal Consciousness." *Annual Rev. of Law and Social Science* 1 (1): 323–68.
Silverstein, Helena. 1996. *Unleashing Rights: Law, Meaning, and the Animal Rights Movement. Law, Meaning, and Violence*. Ann Arbor, MI: University of Michigan Press.
Snow, David A. and Robert D. Benford. 1988. "Ideology, Frame Resonance, and Participant Mobilization." *From Structure to Action: Comparing Social Movement Research across Cultures*. edited by Bert Klandermans, Hanspeter Kriesi and Sidney Tarrow, 197–217. Greenwich: JAI Press.
Snow, David A., E. Burke Rochford, Steven K. Worden and Robert D. Benford. 1986. "Frame Alignment Processes, Micromobilization, and Movement Participation." *American Sociological Rev.* 51 (4): 464–81.
Snow, David A., Rens Vliegenthart and Pauline Ketelaars. 2018. "The Framing Perspective on Social Movements: Its Conceptual Roots and Architecture." *The Wiley Blackwell Companion to Social Movements* 392–410.
Strauss, Valerie. 2017. "'Sexual Assault Survivors to Betsy DeVos: 'Exactly Who are You Here to Serve?'" *Washington Post*, July 14, 2017. Sec Analysis. https://www.washingtonpost.com/news/answer-sheet/wp/2017/07/13/sexual-assault-survivors-to-betsy-devos-exactly-who-are-you-here-to-serve/.
Sweigart, Josh. 2015. "Claims of Injustice on Campus: UD's Pierre among Students Suing over Sexual Assault Cases." *Dayton Daily News*, October 16, 2015. https://www.daytondailynews.com/news/unfair-treatment-alleged-school-suits/mYUHJeTb21pDZBj9D012gK/.
Teles, Steven M. 2008. *The Rise of the Conservative Legal Movement: The Battle for Control of the Law*. Princeton, NJ: Princeton University Press.
The Economist Intelligence Unit. 2021. "Dorm Norms; College Life." *The Economist*, June 12, 2021. Gale OneFile: Business.
Warshaw Burstein LLP. n.d. "Title IX/College Discipline Practice - Kimberly Lau." Warshaw Burstein LLP, https://www.collegedisciplinelaw.com/kimberly-lau (accessed July 6, 2022).
Wermund, Benjamin. 2017a. "DeVos' Donations Spark Questions about Her Stance on Campus Sexual Assault." *POLITICO*, January 9, 2017. https://www.politico.com/story/2017/01/betsy-devos-education-sexual-assault-233376.
Wermund, Benjamin. 2017b. "Revving up Title IX Lawsuits under New Trump Rules." *POLITICO*, October 13, 2017. https://www.politico.com/tipsheets/morning-education/2017/10/13/revving-up-title-ix-lawsuits-under-new-trump-rules-222779.

Cases Cited

Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992).
John Doe v. Denison University et al, 2:16 CV 00143 (S.D. Ohio 2016).
John Doe v. Purdue University et al, 2:17 DV 00033 (N.D. Indi. 2017).

Appendix A

Interviews with due process attorneys and advocates

Practicing attorneys	Firm/organization	Date of interview	Cases involved in sample
Deborah Gordon	Deborah Gordon Law	2/10/2022	4
Mark Hathaway	Hathaway Parker	3/9/2022	0
Andrew Miltenberg	Nesenoff & Miltenberg	3/10/2022	23
Joshua Engel	Engel & Martin, LLC	3/31/2022	10
Eric Rosenberg	Rosenberg & Ball LPA	4/7/2022	7
Kimberly Lau	Warshaw Burstein LLP	4/14/2022	8
Justin Dillon	Kaiser Dillon PLLC	4/21/2022	1
Patricia Hamill	Conrad O'Brien	4/28/2022	3

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Other due process advocates	Firm/organization	Date of interview	Cases involved in sample
KC Johnson	Professor of History, Brooklyn College	2/4/2022	N/A
Joe Cohn	Foundation for Individual Rights and Expression (FIRE)	2/15/2022	N/A
Cynthia Purcell-Garrett	Families Advocating for Campus Equality (FACE)	3/4/2022	N/A
Nancy Gertner	Professor of Practice, Harvard Law School	7/27/2022	N/A

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